

JEFFREY L. HAINES,  
Plaintiff,  
v.  
MICHAEL J. ASTRUE,<sup>1</sup>  
Commissioner of Social  
Security,  
Defendant.

No. CV-06-0257-CI  
ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-Motions for Summary Judgment. (Ct. Rec. 12, 14.) Attorney Lora Stover represents Plaintiff; Assistant United States Attorney Pamela J. DeRusha and Special Assistant United States Attorney Thomas M. Elsberry represent Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 6.) After reviewing the administrative record and briefs filed

<sup>1</sup>As of February 12, 2007, Michael J. Astrue became Commissioner of Social Security. Pursuant to FED. R. CIV. P. 25(d)(1), Commissioner Michael J. Astrue should be substituted as Defendant, and this lawsuit proceeds without further action by the parties. 42 U.S.C. § 405 (g).

1 by the parties, the court **GRANTS** Defendant's Motion for Summary  
2 Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

3 **JURISDICTION**

4 On January 24, 2003, Plaintiff Jeffery L. Haines (Plaintiff)  
5 applied for Social Security Income (SSI) benefits. (Tr. 65-67.)  
6 Plaintiff alleged disability due to chronic pain and numbness in his  
7 upper back, neck, and arms, with an onset date of March 15, 2000.  
8 (Tr. 83.) Benefits were denied initially and on reconsideration.  
9 (Tr. 37-41, 43-45.) Plaintiff requested a hearing before an  
10 administrative law judge (ALJ), which was held before ALJ Mary  
11 Bennett Reed on June 7, 2005. (Tr. 643.) Plaintiff, who was  
12 represented by counsel, testified. (Id.) Vocational Expert Daniel  
13 R. McKinney also testified. (Id.) The ALJ denied benefits and the  
14 Appeals Council denied review. (Tr. 7-9, 16-18.) The instant  
15 matter is before this court pursuant to 42 U.S.C. § 405(g).

16 **STATEMENT OF THE CASE**

17 The facts of the case are set forth in detail in the transcript  
18 of proceedings and are briefly summarized here. Plaintiff was born  
19 on August 11, 1967, and was 37 years old at the time of the hearing.  
20 (Tr. 651.) He had past work experience as a landscaper, cook, book  
21 binder, assembler, electrician, cashier, and custodian. (Tr. 119.)  
22 At the time of his application, he was married and lived with his  
23 spouse, their two children, and a step-child. (Tr. 407.) At the  
24 time of the hearing, he had divorced and remarried, and resided with  
25 his spouse, their daughter, a step-daughter, and a step-son. (Tr.  
26 650.) He reported he had served in the military after dropping out  
27 of high school. (Tr. 651.) Following his discharge, he obtained  
28

1 his GED, and took classes at community college. (Id.)

2 **ADMINISTRATIVE DECISION**

3 At step one, ALJ Reed found Plaintiff had not engaged in  
4 substantial gainful activity since the onset of disability. (Tr.  
5 20, 28.) At step two, she found Plaintiff had severe impairments of  
6 degenerative disk disease of his cervical spine post-fusion, mild  
7 thoracic scoliosis, narcotic dependence, dysthymia, and anxiety  
8 disorder. (Tr. 24, 28.) At step three, she found that these  
9 impairments do not meet or equal one of the listed impairments.  
10 (Id.) ALJ Reed found Plaintiff's allegations not credible. (Tr.  
11 25.) At step four she found Plaintiff had

12 [T]he following residual function capacity: He can do  
13 light work, with no lifting above shoulder level, no  
14 climbing of ladders, only occasional climbing of stairs  
15 and ramps, reaching forward, working above his waist,  
16 operating hand controls, or doing forceful gripping, and  
17 no exposure to dangerous machinery. He also should not  
18 have direct contact with the general public, or work  
19 directly with co-workers.

20 (Tr. 28.) Based on this, she found Plaintiff was able to perform  
21 his past relevant work as an injection mold operator. (Tr. 27, 28.)  
22 In the alternative, ALJ Reed proceeded to step five and found  
23 Plaintiff was a younger individual, with a high-school equivalent  
24 education and "no transferable skills from any past relevant work  
25 and/or transferability of skills is not an issue in this case."  
26 (Tr. 28-29.) She determined Plaintiff had the residual functional  
27 capacity "to perform a significant range of light work." (Tr. 29.)  
28 Based on this capacity she found that there are a "significant  
number of jobs in the national economy that he could perform," and  
that Plaintiff was not under a disability as defined in the Social  
Security Act, at any time through the date of the decision. (Id.)

**STANDARD OF REVIEW**

In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the court set out the standard of review:

The decision of the Commissioner may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner*, 169 F.3d 595, 599 (9th Cir. 1999).

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, although deference is owed to a reasonable construction of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

**SEQUENTIAL PROCESS**

Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the requirements necessary to establish disability:

Under the Social Security Act, individuals who are "under a disability" are eligible to receive benefits. 42 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any medically determinable physical or mental impairment" which prevents one from engaging "in any substantial gainful activity" and is expected to result in death or last "for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). Such an impairment must result from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 423(d)(3). The Act also provides that a claimant will be eligible for benefits only if his impairments "are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy. . . ." 42 U.S.C. § 423(d)(2)(A). Thus, the definition of disability consists of both medical and vocational components.

1 In evaluating whether a claimant suffers from a  
2 disability, an ALJ must apply a five-step sequential  
3 inquiry addressing both components of the definition,  
4 until a question is answered affirmatively or negatively  
5 in such a way that an ultimate determination can be made.  
6 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The  
7 claimant bears the burden of proving that [s]he is  
8 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.  
9 1999). This requires the presentation of "complete and  
10 detailed objective medical reports of h[is] condition from  
11 licensed medical professionals." *Id.* (citing 20 C.F.R. §§  
12 404.1512(a)-(b), 404.1513(d)).

13 It is the role of the trier of fact, not this court, to resolve  
14 conflicts in evidence. *Richardson v. Perales*, 402 U.S. 389, 400  
15 (1971). If evidence supports more than one rational interpretation,  
16 the court may not substitute its judgment for that of the  
17 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749  
18 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision supported  
19 by substantial evidence will still be set aside if the proper legal  
20 standards were not applied in weighing the evidence and making the  
21 decision. *Browner v. Secretary of Health and Human Services*, 839  
22 F.2d 432, 433 (9th Cir. 1988). If there is substantial evidence to  
23 support the administrative findings, or if there is conflicting  
24 evidence that will support a finding of either disability or non-  
25 disability, the finding of the Commissioner is conclusive. *Sprague*  
26 *v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

## 27 ISSUES

28 The question is whether the ALJ's decision is supported by  
substantial evidence and free of legal error. Plaintiff argues the  
ALJ erred when she (1) failed to request that an orthopedist  
participate; (2) failed to request that a psychologist participate;  
(3) improperly rejected the treating physician's testimony; (4)

1 failed to consider Plaintiff's pain complaints in light of his  
2 mental impairments; (5) improperly assessed Plaintiff's credibility;  
3 and (6) improperly assessed the residual functional capacity.  
4 Plaintiff also asserts the ALJ's hypothetical to the vocational  
5 expert was incomplete. (Ct. Rec. 11.)

## 6 DISCUSSION

### 7 A. Duty to Develop the Record

8 "An ALJ's duty to develop the record further is triggered only  
9 when there is ambiguous evidence or when the record is inadequate to  
10 all for proper evaluation of evidence." *Mayes v. Massanari*, 276  
11 F.3d 453, 4509-60 (9th Cir 2001), citing *Tonapetyan v. Halter*, 242  
12 F.3d 1144, 1150 (9th Cir. 2001). Plaintiff alleges that ALJ Reed  
13 should have requested the participation of medical advisors,  
14 specifically an orthopedist and a psychologist, in light of medical  
15 evidence of orthopedic and mental impairments.

16 The record includes reports from an orthopedist, two  
17 psychiatrists and a mental health counselor. In addition to several  
18 reports from multiple doctors regarding the Plaintiff's orthopedic  
19 impairments, the record includes a report from an orthopedist, Dr.  
20 G. W. Bagby, M.D. He opined in two separate evaluations that the  
21 Plaintiff was able to perform light work. Though the orthopedic  
22 evidence was voluminous, it was neither ambiguous, nor inadequate.

23 ALJ Reed reviewed several psychological evaluations, performed  
24 by mental health counselors and psychiatrists. Plaintiff was  
25 evaluated by Dr. David Grubb, M.D., who diagnosed possible chronic  
26 pain syndrome, anxiety disorder, marijuana poly-substance abuse,

1 mixed personality disorder, and a GAF of 55-65.<sup>2</sup> (Tr. 298). A  
2 mental health counselor at Deaconess Pain Clinic diagnosed pain  
3 disorder, dysthymic disorder, cannabis dependence, and a GAF of 35.  
4 (Tr. 408). Psychiatrist Dr. Tim Stoddard, M.D., diagnosed  
5 dysthymia, generalized anxiety disorder, marijuana abuse, and a GAF  
6 of 59. (Tr. 428) Six months later, Dr. Stoddard reported that the  
7 Plaintiff had improved with a GAF of 64. (Tr. 429, 439.) Family  
8 Services Spokane mental health records indicate Plaintiff reported  
9 he was "doing really well" and decided to discontinue counseling for  
10 anxiety and anger. (Tr. 573.) Additionally, in a Mental Residual  
11 Functional Capacity Assessment, reviewing physician Eugene Kester,  
12 M.D., found Plaintiff's dysthymia and generalized anxiety caused  
13 moderate limitations in his ability to carry out detailed  
14 instructions, to maintain attention and concentration for extended  
15 periods, to work in coordination with or proximity to others without  
16 being distracted by them, to complete a normal workday without  
17 interruption from psychologically based symptoms, and to interact

---

18  
19 <sup>2</sup>A Global Assessment of Functioning score of 31-40 indicates  
20 some impairment in reality testing or communication or major  
21 impairment in several areas, such as work or school, family  
22 relations, judgment, thinking or mood. A GAF score of 51-60  
23 indicates moderate symptoms or moderate difficulty in social,  
24 occupational, or school functioning. A GAF score of 61-70 indicates  
25 some mild symptoms or some difficulty in social, occupational, or  
26 school functioning, but generally functioning pretty well, and has  
27 some meaningful interpersonal relationships. DIAGNOSTIC AND STATISTICAL  
28 MANUAL OF MENTAL DISORDERS, 4<sup>th</sup> Ed. (DSM-IV), at 32 (1995).

1 appropriately with the general public. (Tr. 445-447, 4357-67.) The  
2 diagnoses by acceptable medical sources are consistent; the record  
3 is neither ambiguous nor inadequate. Thus, ALJ Reed was not legally  
4 required to seek a medical advisor regarding Plaintiff's  
5 psychological impairments.

6 **B. Medical Opinions**

7 Plaintiff argues the ALJ's determination is not supported by  
8 substantial evidence because she improperly evaluated the medical  
9 opinions. The record includes, treatment notes from physicians J.  
10 Allan Maddox, M.D.; Kathleen Meyers, M.D.; Jeff O'Connor, M.D.;  
11 Robert Corbett, M.D.; and Michael Sikora, M.D. Also included are  
12 hospital records from emergency room visits; physical therapy  
13 records; evaluations from neurologists, an orthopedist,  
14 psychologists, and radiologists; evaluations from non-examining  
15 agency physicians and medical experts; as well as evaluations from  
16 other sources.

17 In disability proceedings, a treating or examining physician's  
18 opinion is given more weight than that of a non-examining physician.  
19 *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004). If a  
20 treating or examining physician's opinion is not contradicted, it  
21 can be rejected only with "clear and convincing" reasons. *Lester v.*  
22 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). If contradicted, the ALJ  
23 may reject the opinion if she states specific, legitimate reasons  
24 that are supported by substantial evidence. *See Flaten v. Secretary*  
25 *of Health and Human Services*, 44 F.3d 1453, 1463 (9th Cir. 1995).

26 Historically, the courts have recognized conflicting medical  
27 evidence, the absence of regular medical treatment during the  
28 alleged period of disability, and the lack of medical support for



1 doctors' reports based substantially on a Plaintiff's subjective  
2 complaints, as specific, legitimate reasons for disregarding an  
3 examining physician's opinion. See *Flaten*, 44 F.3d at 1463-64; *Fair*  
4 *v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989).

5 Agency psychologists reviewed Plaintiff's records in March and  
6 May 2004. (Tr. 122, 261.) "State agency medical and psychological  
7 consultants are highly qualified physicians and psychologists who  
8 are experts in the evaluation of medical issues in disability claims  
9 under the Social Security Act." *Social Security Ruling (SSR)* 96-6p.  
10 Their findings of fact must be treated as expert opinion evidence of  
11 non-examining sources by the ALJ, who can give weight to these  
12 opinions only insofar as they are supported by evidence in the case  
13 record. The ALJ cannot ignore these opinions and must explain the  
14 weight given. *Id.*

15 ALJ Reed properly rejected Plaintiff's treating physician's  
16 opinion that Plaintiff was unable to work. Medical records indicate  
17 Dr. Sikora treated Plaintiff from January to May 2005. (Tr. 540-  
18 57). Several examining doctors contradicted Dr. Sikora's conclusion  
19 that Plaintiff was unemployable, opining that Plaintiff was capable  
20 of activities meeting the definition of "light" work. (Tr. 270-73,  
21 304, 447, 450-54, 486-89, 503.) ALJ Reed provided legitimate and  
22 specific reasons, supported by the record, for rejecting Dr.  
23 Sikora's opinion. First, Dr. Sikora's reports contain  
24 inconsistencies. (Tr. 543, 544, 548.) Second, the record contained  
25 evidence of drug seeking behavior. (Tr. 368.) Lastly, to the extent  
26 that Dr. Sikora's opinion was based on Plaintiff's subjective  
27 complaints of pain it was accorded no weight, because ALJ Reed found  
28

1 Plaintiff was not credible. (Tr. 25.)

2       Regarding Plaintiff's reference to Dr. Kester's evaluation,  
3 (Ct. Rec. 11 at 10), the ALJ specifically adopted Dr. Kester's  
4 opinion that Plaintiff should not work directly with others. (Tr.  
5 26.) Since she adopted his opinion, she need not provide rationale  
6 for rejecting it.

7 **C. Credibility of Plaintiff's Pain Testimony**

8       "An ALJ must provide specific and cogent reasons for rejecting  
9 a claimant's subjective complaints, and in the absence of  
10 affirmative evidence of malingering, the ALJ's reasons must be clear  
11 and convincing." *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d  
12 595, 599 (9th Cir. 1999). Furthermore, "the ALJ must specifically  
13 identify the testimony she or he finds not to be credible and must  
14 explain what evidence undermines the testimony." *Holohan v.*  
15 *Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001) (citation omitted).  
16 The following factors may be considered: (1) the claimant's  
17 reputation for truthfulness; (2) inconsistencies in the claimant's  
18 testimony or between his testimony and his conduct; (3) claimant's  
19 daily living activities; (4) claimant's work record; and (5)  
20 testimony from physicians or third parties concerning the nature,  
21 severity, and effect of claimant's condition. *Thomas v. Barnhart*,  
22 278 F.3d 947, 958 (9th Cir. 2002). "[O]nce the claimant produces  
23 objective medical evidence of an underlying impairment, an  
24 adjudicator may not reject a claimant's subjective complaints based  
25 solely on a lack of objective medical evidence to fully corroborate  
26 the alleged severity of [disabling symptoms]." *Bunnell v. Sullivan*,  
27 947 F.2d 341, 345 (9th Cir. 1991).

1 ALJ Reed cited specific inconsistencies in the record supporting  
2 her finding that the Plaintiff was not credible. (Tr. 25.)  
3 Specifically, she noted discrepancies in his self reports related to  
4 the length of his army service, educational background, work history  
5 since 1990, and drug use. (Id., see also Tr. 684-85.)  
6 Additionally, she indicated that his reported daily activities did  
7 not comport with his complaints of disabling symptoms and  
8 limitations. (Tr. 25.) Further, the record showed possible drug  
9 seeking behavior. (Id.) The detailed and specific analysis  
10 supports ALJ Reed's finding that the Plaintiff was not credible with  
11 "clear and convincing" evidence.

12 **D. Residual Functional Capacity (RFC)**

13 Although the burden of proof lies with the claimant at step  
14 four, the ALJ still has a duty to make the requisite factual  
15 findings to support the ALJ's conclusion. SSR 82-62. This is done  
16 by looking at the "residual functional capacity and the physical and  
17 mental demands" of the claimant's past relevant work. 20 C.F.R. §§  
18 404.1520(e) and 416.920(e). These findings must be based on the  
19 evidence in the record and must be developed and fully explained in  
20 the disability decision. As the Ninth Circuit stated, "[t]his  
21 requires specific findings" sufficient "to insure that the claimant  
22 really can perform his past relevant work." *Pinto v. Massanari*, 249  
23 F.3d 840, 845 (9th Cir. 2001).

24 The ALJ must assess Plaintiff's ability to perform each of the  
25 seven strength demands (sitting, standing, walking, lifting,  
26 carrying, pushing, and pulling); discuss his ability to perform  
27 sustained work activities in an ordinary work setting on a regular  
28

1 and continuing basis; and carefully compare his restrictions with  
2 exertional demands of sedentary work as defined by the regulations.  
3 SSR 96-8p.

4 ALJ Reed made specific findings regarding Plaintiff's RFC which  
5 was supported by substantial evidence. (Tr. 25-26.) Except for the  
6 Plaintiff and Dr. Sikora, medical sources supported ALJ Reed's  
7 finding that the Plaintiff was not totally disabled. (Tr. 270-73,  
8 304, 447, 450-54, 486-89, 503.) As discussed above, ALJ Reed's  
9 findings that the Plaintiff was not credible and rejection of Dr.  
10 Sikora's opinion were proper. Once these two sources were properly  
11 discredited, the remaining evidence unambiguously supports ALJ  
12 Reed's determination. Opinions from physicians employed by the  
13 State Disability Determination Services support a finding of not  
14 disabled. (Tr. 269-73, 302-04, 306-18, 417, 457-69, 471, 485-90.)  
15 In addition, the opinion of Dr. Bagby, the physical capacity  
16 evaluation at St. Lukes, and the Plaintiff's activities of daily  
17 living support her conclusions that the Plaintiff is able to perform  
18 light work. (Tr. 500, 503.) Plaintiff argues that ALJ Reed  
19 neglected to consider limitations including physical stamina, side  
20 effects of medication, and limitations from pain complaints. (Ct.  
21 Rec. 11 at 11.) However, the weight given each of these complaints  
22 depends on crediting Plaintiff's properly discounted testimony;  
23 thus, they were properly considered and rejected. (Tr. 25.)

24 Substantial evidence also supports ALJ Reed's RFC determination  
25 regarding Plaintiff's mental limitations. (Tr. 26.) The evidence  
26 includes diagnoses including dysthymia, marijuana dependance, and  
27 anxiety disorder. (Tr. 298, 457-67, 575.) Plaintiff was prescribed  
28

1 Paxil. (Tr. 298.) Dr. Stoddard met with Plaintiff over the course  
2 of several months during which he reported that Plaintiff's mood had  
3 improved and anxiety decreased with the medication. (Tr. 429.)  
4 Further, he indicated that Plaintiff was alert and oriented. (Tr.  
5 430.) The Plaintiff's testimony supports this as well; he indicated  
6 that he quit taking medication for depression or anxiety because he  
7 felt he did not need it. (Tr. 665.) Additionally, he said that  
8 except for childhood, he has not had difficulties associated with  
9 depression or anxiety. (Tr. 666.) Dr. Eugene Kester, M.D., opined  
10 Plaintiff "will likely have periods of reduced concentration,  
11 persistence and pace." (Tr. 447.) ALJ Reed addressed this opinion.  
12 She reasoned that, "restricting the Plaintiff to light work will  
13 reduce the interference of pain complaints and limiting the  
14 Plaintiff to unskilled work, which by definition is simple work,  
15 will negate any additional limits on attention, concentration or  
16 pace." (Tr. 26.) In addition, she noted that Dr. Stoddard found  
17 Plaintiff to be pleasant, cooperative, alert, and oriented. (Id.)  
18 Further, she accepted the opinions regarding his mental limitations.  
19 Dr. Edward T. Beaty, Ph.D., and Dr. Kester opined that the Plaintiff  
20 should only maintain superficial contacts with co-workers and the  
21 general public. (Tr. 304, 447.) In her RFC findings, ALJ Reed  
22 determined that the Plaintiff should not have direct contact with  
23 the general public, or work directly with co-workers. (Tr. 28.)

24 The ALJ's RFC is supported by substantial evidence. The  
25 hypothetical propounded to the vocational expert properly included  
26 the limitations found by the ALJ. (Tr. 676-77.) Therefore,  
27 Plaintiff's assertion that the ALJ's hypothetical was incomplete is  
28

1 without merit.

2 **CONCLUSION**

3 ALJ Reed's determination that Plaintiff is under a disability  
4 is supported by substantial evidence and free of legal error.  
5 Accordingly,

6 **IT IS ORDERED:**

7 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 12**) is  
8 **DENIED;**

9 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 14**) is  
10 **GRANTED;**

11 The District Court Executive is directed to file this Order and  
12 provide a copy to counsel for Plaintiff and Defendant. Judgment  
13 shall be entered for **DEFENDANT** and the file shall be **CLOSED**.

14 DATED May 18, 2007.

15  
16 S/ CYNTHIA IMBROGNO  
17 UNITED STATES MAGISTRATE JUDGE  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28